

Summary of the legal issues that arose from the introduction
of Barclay in Switzerland

- ^{based on} 1. The Swiss federal food law, ^{the} ODA (Ordonnance Fédérale sur les Denrées Alimentaires) is the ^{regulation} governing constituent measurement and labelling. In the ^{law} of 26 May 1978, Article 420 letter C states that "every packet of cigarettes for sale to consumers must carry the yields of tar and nicotine and these to be printed so that they are clearly visible and legible."
2. The application and control of these requirements are in the hands of the cantonal chemists who, with the agreement with the Federal Office of Public Health, ^{AUBERT} deputed Dr. Romann and Dr. ~~Ambore~~, cantonal chemists of the Cantons of Zurich and Vaud respectively, to be responsible for carrying out the necessary analyses.
3. Legally a manufacturer can launch a brand onto the Swiss market without having submitted it for prior testing to the cantonal chemist. However, ~~in subsequent testing~~, should the cantonal chemist disagree with the figures printed by the manufacturer, ^{then the onus is on the} manufacturer to make the necessary changes.
4. In the case of Barclay, BAT had submitted the brand in advance to the Zurich Cantonal Chemist, ^{Dr. Romann}, and they had received the go-ahead from ^{him} for launching ^{with the indication} at 1 mg tar and 0.2 nicotine ^{by letter} of 23.7.82 and in a certificate of analysis of 26.7.72. ^{Dr. Aubert took his distance from Dr. Romann's position}
5. Unlike the USA, where it was the FTC who took the legal action, in Switzerland it was ^{the} manufacturers who initiated these steps. They sought before a Geneva court (BAT being Geneva-based) "mesures provisionnelles" - which would require BAT to withdraw the product from the market - before proceeding with "procès à fond". The basis upon which the legal action was brought was misleading of the consumer and unfair competition (concurrence déloyale) ^(smoking machine is checked by the cigarette Barclay. There was a hint the indications of tar and nicotine content on the pack were misleading)
6. Since numbers have been appearing on packs since 1978, the smoker has become used to the numbers as a scale of reference. Therefore, measured against this familiar scale, the Barclay numbers constitute misleading information being given to the smoker, and as such damage the credibility of the industry as a source of reliable consumer information.
7. BAT, on the other hand, claimed that it was in fact the authority responsible for the implementation of ODA and for seeing that consumers were not misled, who had given their authorization for the brand to be put on the market at 1 mg tar and 0.2 mg nicotine. And they countered that the action of their competitors was inspired by market and not legal considerations.

both the additional indications determined according to standard methods